

SPECIAL CIVIL APPLICATION No 817 of 1985

Hon'ble MR.JUSTICE S.D.PANDIT

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5. Whether it is to be circulated to the Civil Judge? No

Versus

DIVISIONAL CONTROLLER

MR HK RATHOD for Petitioner

MR SN SHELAT for Respondent No. 1

CORAM : MR.JUSTICE S.D.PANDIT

ORAL JUDGEMENT

Harisinh Chhatrasinh Chhasatiya has filed the present petition under article 227 of the Constitution of India to challenge the portion of the award passed by the Presiding Officer of the Labour Court, Baroda on 26.7.82

by which he has been denied back wages as well as stoppage of two increments permanently.

2. The petitioner was working as a electrician with the respondent corporation for ten years prior to November 1978. The petitioner was charge sheeted by the corporation for having remained absent without leave for the period between 9.11.78 to 24.12.78. Thereafter a departmental inquiry was held against the petitioner and the petitioner was discharged from service on 27.4.79. Being aggrieved by the said decision, present petitioner had approached the Labour Court and the Labour Court found by its order dt. 20.1.82 that the departmental inquiry held against the petitioner was not proper and legal. However, he proceeded to hear the case on merits by giving opportunity to the employer of the petitioner to lead evidence in order to justify action against the petitioner. The Labour Court on appreciating the evidence produced before it came to the conclusion that the petitioner had misconducted himself by not remaining on his duty and by remaining absent without sanctioning the leave and he was guilty of the charge levelled against him. However, the Presiding Officer of the Labour Court found that the order of the dismissal of the present petitioner was not justified. He therefore, modified the punishment by passing the following order.

"It is hereby ordered that the first party should reinstate the second party without back wages(with continuing his service) and by not granting two increments continuously with permanent effect, he should be reinstated within one month from the date of publication of the order. So far as the costs is concerned, no order is passed."

3. The petitioner has now come before this court and the main contention raised on behalf of the petitioner is that the Labour Court was not justified in denying the back wages to the petitioner. It is contended on behalf of the petitioner that the petitioner is entitled to get back wages in view of the fact that the departmental inquiry held against the workmen was found by the Labour Court to be illegal and invalid and consequently the order of punishment passed by the Labour Court could not relate back to the date of the dismissal order passed by the respondent. It is also contended before me that the punishment awarded to the petitioner of denying of the back wages is also not proportionate to the misconduct committed by the petitioner. It is contended before me by Mr.Rathod ,learned advocate for the petitioner that

the petitioner was absent on account of illness and he had produced medical certificate before the Labour Court and the Labour Court has not recorded a finding that said certificate is forged or false or that the petitioner was not ill.

5. Mr.Rathod vehemently contended before me that the departmental inquiry held by the respondent against the petitioner was found to be illegal and invalid by the Labour Court and secondly the petitioner is entitled to get back wages till the date of the award passed by the Labour Court. The Labour Court has made the following observations in para 4 of its judgment as under:

"In this case, the order for the preliminary point was made vide exh. 19 dated 28.1.82 and in pursuance of the order, it was decided that the Departmental inquiry was not proper and legal and thereafter, this case was fixed for hearing on merits."

It is very pertinent to note that the order which has been referred by the Labour Court in para 4 above passed below exh.19 on 28.1.82 was not challenged by the respondent before any superior authority by way of preferring appeal or revision. Consequently, the conclusion to which the Labour Court has arrived at viz. that the original departmental proceedings was not legal and valid has become final. If the provisions of section 11A of the ID Act 1947 are considered along with the finding of the Labour Court then it would be clear that the preliminary inquiry or departmental inquiry held against the present petitioner was not proper and legal, then the finding of the guilt recorded by the Labour Court could not be related back to the date of the order of punishment passed by the disciplinary authority of the employer. The fact that the respondent was permitted to lead evidence before the Labour Court in order to prove his misconduct also indicates that at the time of leading the said evidence, the relationship of the workman and the employer was in existence and it had not come to an end on account of the order of punishment passed by the employer or disciplinary authority. In the case of Dasbhai Gupta vs. Industrial Tribunal IV UP Lucknow reported in AIR 1990 SC 2174 it has been held by the Supreme Court that when the order of dismissal passed by the management was declared to be illegal and though the Tribunal had subsequently upheld the punishment the date of dismissal cannot relate back to the employer's illegal order and the workman is entitled to the salary for the period from the date of dismissal to the date of

award. The Division Bench of this Court following the said decision of the Apex Court in SCA No. 5694/88 decided on 22.9.92 has also taken the same view. Mr. Rathod has also cited before me the case reported in 1995 (1) LLJ 268 which has also taken the same view.

6. Therefore, as per the legal position laid down by the Apex Court in the case of AIR 1990 SC 2174 the order passed by the Presiding Officer, Labour Court of denying back wages to the petitioner from the date of the order of dismissal till the date of the award is improper and illegal and consequently only that part of the order of the Labour Court deserves to be interfered with by allowing this petition to that extent.

7. The next contention raised by Mr. Rathod that the punishment was not proportionate to the guilt of the petitioner, I am not able to accept the said submission. The material on record shows that present petitioner had committed same and similar misconduct on three previous occasions and inspite of minor punishment awarded to him he had not shown any improvement. When a person though opportunity to make improvement does not make any improvement and continue to repeat the same misconduct cannot come before the court and say that he has been awarded harsh punishment. Thus I allow the present writ petition by modifying the award passed by the Labour Court Baroda on 26.7.82 in REF.(LCA) 89/80 only to the following extent. The petitioner is entitled to get full backwages for the period running between 27.4.79 and 26.7.82. Rest of the order of the Labour is maintained. Respondent should pay the back wages within six weeks from the date of receipt of the writ of this Court. Rule is made absolute to the aforesaid extent only. No order as to costs.

(S.D.Pandit.J)